

# Understanding Title IX

January, 2006

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11/04/05

# Objective

To familiarize you with the compliance provisions  
of Title IX of the Education Amendments  
of 1972, as amended



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# Title IX

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance

*Title IX of the Education Amendments of 1972*  
*20 U.S.C. §1681 et seq.*

*NSF's Title IX Regulations at 45 C.F.R. Part 618*  
*NSF's Title VI Regulations at 45 C.F.R Part 611*



# Federal Financial Assistance

**Under regulations implementing Title VI, federal financial assistance includes, but is not limited to:**

1. Grants and loans
2. Grant or donation of federal property and interests in property
3. The detail of federal personnel
4. The sale and lease of, and the permission to use (on other than a casual or transient basis) federal property at little or no cost
5. Any other federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance



# Federal Action that is NOT Federal Financial Assistance

- Procurement Contracts
- Licenses
- Statutory regulations or programs that directly or indirectly support, or establish guidelines for an entity's operations. *Ex. Federal Bank Regulations*
- Contracts of guaranty and insurance





# **Title VI and Title IX: Differences and Similarities**



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# Title VI

No person in the United States shall, on the basis of **race, color, or national origin**, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under **any program or activity** receiving federal financial assistance

*Section 601 of the Civil Rights Act of 1964  
42 U.S.C. §2000d*

*NSF's Title VI Regulations at 45 C.F.R. Part 611*



# Title IX

No person in the United States shall,  
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# Exemptions to Title IX Coverage

**Most Title IX exemptions are not applicable to NSF recipients. For example:**

Membership practices of certain single sex organizations

- *Beauty pageants*
- *Father-son or mother-daughter activities in an education program or activity*



# Title IX and Employment Discrimination

- Title IX prohibits employment discrimination in any education program or activity receiving FFA
- In general, the substantive standards and policies developed through case law under Title VII of the Civil Rights Act of 1964 and the Guidelines drafted by the EEOC on employment discrimination claims apply to employment actions brought under Title IX



# Federal Agency Enforcement of Title IX In the Employment Context

- Generally, refer to EEOC sex-based employment discrimination claims where there is no Title IX jurisdiction
  - *Entity does not receive FFA; not an education program or activity*
- If both agency and EEOC have jurisdiction, refer individual complaints to EEOC



# Federal Agency Enforcement of Title IX In the Employment Context

- If both agency and EEOC have jurisdiction and complaint alleges pattern/practice of discrimination, agency should keep the complaint
- If complaint alleges discrimination in both employment and in the education program or activity, agency should keep complaint
- Special Circumstances



# Title VI & Title IX Pre-award Reviews

## Assurances

- An assurance ensures that applicants and recipients of federal financial assistance are aware of their obligations to operate all of their (*education*) programs or activities in compliance with the nondiscrimination mandates of Titles VI & IX and the regulations implementing these laws
- Assurances also provide a basis for the federal government to sue to enforce compliance with these statutes
- The responsible agency official determines the form of the assurance



# Data Collection

- Notice of all lawsuits (*and for recipients, complaints*)
- A description of assistance applications that it has pending in other agencies and other FFA being provided
- A description of any civil rights compliance reviews of the applicant during the preceding two years
- A statement as to whether the applicant has been found in noncompliance with any relevant civil rights requirements



# Determining Pre-award Compliance

- The Title VI Coordination Regulations require that agencies “shall make [a] written determination as to whether the applicant is in compliance with Title VI.”  
28 CFR §42.407(b)
- If such a determination cannot be made from the submitted data, the agency shall require additional information to be submitted and take other necessary steps to making the determination - *including communicating with local government officials/ community organizations and/or conducting onsite reviews*



# Title IX Procedural Requirements for Recipients

- Assurances
- Designation of Title IX Coordinator
- Creation of Title IX Grievance Procedures
- Dissemination of Title IX Policy





# Title IX Coordinator Responsibilities

- Providing information on Title IX requirements
- Distribution of grievance forms to potential complainants
- Receipt of formal grievances and providing notification of receipt to complainants
- Training the staff responsible for grievance procedures
- Providing ongoing training and technical assistance on Title IX



# An Effective Title IX Coordinator Should Have

- In-depth knowledge of the Title IX regulations
- General knowledge of federal and state non-discrimination laws
- Knowledge of the recipient's Title IX grievance procedures



# An Effective Title IX Coordinator Should Have

- Ability to diagnose, clarify, and mediate differences of opinion
- Title IX coordinator must be provided the information and authority necessary to enforce Title IX compliance requirements

— *From Dept. of Education's "Title IX Grievance Procedures: An Introductory Manual"*



# Title IX Grievance Procedures

- Although recipients can use existing complaint procedures for complaints of sex-based discrimination, it is recommended that recipients develop and tailor grievance procedures specifically to address allegations of sexual harassment because of the sensitive nature of such complaints



# Title IX Grievance Procedures

- Title IX regulations do not require a specific grievance format. For recipients who do not have Title IX grievance procedures or who wish to refine existing procedures, we recommend that you consult with the Dept. of ED guidance document



# Dissemination of Title IX Policy

- At a minimum, the notification of the Title IX policy must state:
  - *Title IX and the Title IX regulations apply to employment and admissions*
  - *Inquiries regarding Title IX and its regulations can be referred to the Title IX Coordinator*
- Notification must be done by
  - *Publishing in newspapers and magazines operated by the recipient*
  - *Publishing in memoranda or other written communications distributed to every student or employee of the recipient*



# Title IX Outreach

- Recipients must publish in each bulletin, catalog, or application form made available to the public or used to recruit students or employees, its Title IX nondiscrimination policy
- Recipients must not use or distribute a publication that suggests by its text or illustration that it treats applicants, students, or employees differently on the basis of sex, except as permitted by the Title IX regulations



# Complaint Investigations

- Voluntary compliance is goal throughout
- Receive and review complaint
- Determine jurisdiction and identify issues
- Complaint investigation
- Investigative report
- Letters of findings and resolutions



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# Conducting Compliance Reviews

- Selection of recipient(s) for a compliance review
- Cannot be arbitrary choice [*See United States v. Harris Methodist Fort Worth, 97 F.2d 94 (5th Cir. 1992)*]
- Three-factor test for reasonableness:
  - *Authorized by statute;*
  - *Properly limited in scope; and,*
  - *Must be able to show how the agency designated the target of the review*



# Reasons To Believe There Is Discrimination

- Congressional inquiries
- Complaints or onsite investigation
- Newspaper articles or other media reports
- Information from program staff, advocacy groups, or representatives of beneficiaries, which suggest compliance review is needed



# Reasons To Believe There Is Discrimination

- Issues identified as problems faced by beneficiaries
- Issues targeted in agency's strategic plan
- Geographic areas where there has been little activity
- Pursuant to plan to conduct compliance reviews of agencies within a certain time-frame



# What Kinds of Issues Would You Consider During A Compliance Review?

- Regulatory requirements
- Employment
- Admission, enrollment
- Policies, procedures, practices, etc...



# Concluding the Review or Investigation


- Create an investigative report
- Summary of your findings  
*(this is an internal document)*
- Negotiate a settlement agreement
- Letter of Findings *(no violation)*



# Concluding the Review or Investigation

- Letter of Resolution – *Can simply explain steps recipient has taken or promises to take to resolve any compliance issues*
- Letter of Findings (*violation*)
- Opportunity to settle - *no litigation*
- Terminate funds or refer to DOJ for litigation
- Monitoring Compliance – *very important*





# **“The Spirit of the Law”**



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